



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

December 3, 2019

Mr. Tom Chapman, Supervisor  
New England Field Office  
U.S. Fish and Wildlife Service  
70 Commercial Street, Suite 300  
Concord, NH 03301

Re: Effects of Certain State of Vermont Water Quality Standards on Federally Endangered and Threatened Species.

Dear Mr. Chapman:

As you know, on May 6, 2019, US EPA's Region 1 submitted to your office a Biological Evaluation of Vermont's revised water quality standards, consistent with its obligations under the Endangered Species Act.

In response, we were pleased to receive very useful and extensive comments and data from Susi von Oettingen over the intervening period. Her participation made a significant contribution to our efforts and the final consultation document. We would like to thank you for providing her availability, and to thank Susi for her time, wisdom, and experience.

The attached Final Biological Evaluation (BE) includes revisions based on your office's review of EPA's draft BE. It addresses whether EPA's approval of the State's revised criteria is likely or unlikely to adversely affect federally-listed endangered or threatened species in Vermont.

The new and revised water quality standards which VT DEC adopted on December 16, 2016, and which became effective January 15, 2017, include revised temperature, phosphorus, and cadmium criteria for aquatic life use (Vermont DEC 2017). If approved by EPA, the criteria will be effective for all Clean Water Act purposes, including being the applicable instream criteria to protect aquatic life uses in Vermont's waters. Consistent with its obligations under the Endangered Species Act, EPA Region 1 is consulting with the United States Fish and Wildlife Service (FWS) on the revised aquatic life criteria in advance of approving them.

For purposes of this Section 7 consultation support document, the extent and location of the action area are defined as:

- 1.) the lowest stretch of the Black River in Vermont, approaching its confluence with the Connecticut River, that constitutes the current range of dwarf wedgemussel in the State (USFWS 2013);
- 2.) multiple locations in Windham and Windsor Counties for the Northeastern bulrush (von Oettingen 2019);

- 3.) Addison, Bennington, Chittenden, Orange, Rutland and Windsor Counties for the Indiana bat (von Oettingen 2019); and
- 4.) all of the State of Vermont for the Northern long-eared bat.

One endangered species of mollusk listed under the Endangered Species Act occurs or has the potential to occur in the action area and may be affected by the proposed action. One species of endangered bulrush, one species of endangered bat, and one species of threatened bat occur in the action area. No critical habitat for any of these species has been designated in Vermont.

The BE addresses the proposed action in compliance with Section 7(c) of the ESA of 1973, as amended. Section 7 of the ESA assures that, through consultation (or conferencing for proposed species) with the FWS, federal actions do not jeopardize the continued existence of any threatened, endangered or proposed species, or result in the destruction or adverse modification of critical habitat. The BE evaluates the potential effects that the proposed aquatic life criteria may have on federally protected species, specifically the Dwarf wedgemussel, Northeastern bulrush, the Indiana bat and the Northern long-eared bat.

EPA concludes that approval of the water quality standards will either not affect the listed species, or may affect, but is unlikely to adversely affect the listed species.

EPA seeks FWS concurrence that approval of the water quality standards will not affect, or is unlikely to adversely affect the listed species.

Please contact me at (617) 918-1629 or Steve Winnett at (617) 918-1687 if you have any questions. We are looking forward to hearing from you.

Sincerely,



Ralph W. Abele

Chief, Water Quality Standards Section  
Water Division  
EPA Region 1

CC:

Ethan Swift, VT DEC  
Dan Arsenault, EPA R1  
Ann Williams, EPA R1  
Steven Winnett, EPA R1  
Susi von Oettingen, US FWS